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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/738,749	12/14/2000	Gary Strawn	CISCP186	2098
22434	7590	08/02/2005	EXAMINER	
BEYER WEAVER & THOMAS LLP			PHILLIPS, HASSAN A	
P.O. BOX 70250			ART UNIT	
OAKLAND, CA 94612-0250			PAPER NUMBER	

2151

DATE MAILED: 08/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/738,749

Applicant(s)

STRAWN, GARY

Examiner

Hassan Phillips

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 September 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This action is in response to the request for continued examination, amendments and remarks filed on September 7, 2004.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 7, 2004 has been entered.

Drawings

3. After consideration of the amendments to the drawings to include the legend "Prior Art" Examiner has withdrawn the objection to the drawings.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 21, 25, 26, are rejected under 35 U.S.C. 101 because the claimed inventions are directed to non-statutory subject matter. A computer program product,

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and a computer usable medium as defined by Applicants specification (pg. 15, lines 11-22), is not a new and useful process, machine, manufacture, or composition of matter.

Response to Arguments

6. Applicant's arguments filed September 7, 2004 have been fully considered but they are not persuasive. Applicant argued that:

- a) Motivation for combining Welter with AAPA has not been indicated;
- b) The claim rejections under 35 U.S.C. 102 should be withdrawn since Examiner has admitted that Welter does not teach determining the health status of a selected network device.

Examiner respectfully disagrees.

7. Regarding item a), In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Applicant admits it was well known in the art to determine the health status of a network device based upon analyzing the data of a server's response (pg. 3, lines 17-26).

8. Regarding item b), Examiner agrees Examiner has admitted Welter does not teach determining the health status of a selected network device. However, Examiner submits that the claims rejected under 35 U.S.C. 102 (claims 9-11, 13, 25, and 35) are directed towards a method, computer program product, and system for performing content verification of data received from a selected network device, not determining the health status of a selected network device. Accordingly the references supplied by the examiner in the previous office action covers the claimed limitations. Applicant is requested to review the prior art of record for further consideration.

9. Applicant's remaining arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 9-11, 13, are rejected under 35 U.S.C. 102(b) as being anticipated by Welter et al. (hereinafter Welter), U.S. Patent 6,138,157.

12. In considering claim 9, Welter discloses a method for performing content verification of data received from a selected server, the method comprising: receiving data from the selected server, said data including content information, (col. 8, lines 1-6); and verifying at least a portion of said content information by verifying at least one format of selected content information using predetermined format verification rules, (col. 8, lines 1-6); wherein said content information verification includes determining whether any inconsistencies are detected in the at least one format of said selected content information, (col. 8, lines 1-6).

13. In considering claim 10 see Welter, col. 7, lines 66-67, and col. 8, line 1.

14. In considering claim 11 see Welter, col. 8, lines 1-6.

15. In considering claim 13 see Welter, col. 8, lines 1-6.

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 1-8, 14-24, 26-34, 36-44, are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admitted Prior Art (AAPA) in view of Welter.

18. In considering claims 1, 14, 21, 26, 27, 38, 44, AAPA discloses it was well known in the art to have a method, computer program product, and system for determining a health status of a selected network device in a data network, the method, computer program product, and system comprising: transmitting a resource request to a selected server among a plurality of servers in a server farm, (page 3, lines 17-26); receiving data from the server in response to the resource request, (page 3, lines 17-26); and, determining the health status of the server based upon the data received from the server in response to the resource request, (page 3, lines 17-26).

Although AAPA shows substantial features of the claimed invention, it fails to explicitly disclose: the data including content information.

Nevertheless, in a similar field of endeavor, Welter teaches a method and apparatus for testing web sites comprising: receiving HTML data from a network device in response to a resource request, said data including content information, and, verifying content information by verifying the format of the selected content information using format verification rules that match against string values, regular expressions, and calculated values, to determine any inconsistencies, (col. 8, lines 1-6).

Thus, given the teachings of Welter it would have been obvious to a person of ordinary skill in the art to modify AAPA with Welter to show the data including content information and verifying at least a portion of the content information by verifying at least

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one format of selected content information using predetermined format verification rules. This would have advantageously provided an efficient means for determining the health or status of a particular server in a server farm, Welter col. 1, lines 29-35 and lines 43-47, AAPA, page 3, lines 19-20.

19. In considering claims 2, 22, and 28, see Welter, col. 8, lines 1-6. One of ordinary skill in the art would modify the teachings of AAPA with Welter for the same reasons indicated in claims 1, 21, and 27.

20. In considering claims 3, 15, 23, 29, 36 and 43, see Welter, col. 8, lines 1-6. One of ordinary skill in the art would modify the teachings of AAPA with Welter for the same reasons indicated in claims 1, 14, 21, 27, 35, and 38.

21. In considering claims 4, 16, 24, 30, 37, see AAPA, page 3, lines 6-26.

22. In considering claims 5, 17, 31, and 39, see Welter, col. 8, lines 1-6. One of ordinary skill in the art would modify the teachings of AAPA with Welter for the same reasons indicated in claims 1, 14, 27, and 38.

23. In considering claims 6, 18, 32, and 40, see AAPA, page 4, lines 4-19.

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24. In considering claims 7, 19, 33, and 41, see AAPA, page 4, line 29-page 5, line 5.

25. In considering claims 8, 20, 34, and 42, see AAPA, page 4, line 29-page 5, line 5.

26. Claims 12, 25, 35, are rejected under 35 U.S.C. 103(a) as being unpatentable over Welter in view of Applicant's Admitted Prior Art (AAPA).

27. In considering claim 12, although Welter shows substantial features of the claimed invention, it fails to explicitly disclose: the selected server being in a load balanced server farm system.

Nevertheless, as admitted by Applicant, load balanced server farm systems were well known in the art at the time of the present invention, (page 3, lines 6-26).

Thus, it would have been obvious to a person of ordinary skill in the art to modify Welter with AAPA to show the selected server being in a load balanced server farm system. This would have advantageously provided desired content to a user more quickly allowing a user to perform content verification of received data more efficiently, AAPA, page 3, lines 6-8.

28. In considering claims 25 and 35, Welter discloses a computer program product and a system for performing content verification of data received from a

selected network device, the computer program product and system comprising:
computer code for receiving data from a selected server, said data including content information, (col. 8, lines 1-6); and computer code for verifying at least a portion of said content information by verifying at least one format of selected content information using predetermined format verification rules, (col. 8, lines 1-6); wherein said content information verification includes computer code for determining whether any inconsistencies are detected in the at least one format of said selected content information, (col. 8, lines 1-6).

Although Welter shows substantial features of the claimed invention, it fails to explicitly disclose: the selected server being among a plurality of servers in a server farm.

Nevertheless, as admitted by Applicant, server farms were well known in the art at the time of the present invention, (page 3, lines 6-26).

Thus, it would have been obvious to a person of ordinary skill in the art to modify Welter with AAPA to show the selected server being in a server farm system. This would have advantageously provided desired content to a user more quickly allowing a user to perform content verification of received data more efficiently, AAPA, page 3, lines 6-8.

Conclusion

29. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Godfrey et al., U.S. Patent 6,662,217, discloses an automated testing system for testing server computers over the Internet.

30. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hassan Phillips whose telephone number is (571) 272-3940. The examiner can normally be reached on M-F 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on (571) 272-3939. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HP/
7/28/05


ZARNI MAUNG
SUPERVISORY PATENT EXAMINER